

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|   |   |                                    |
|---|---|------------------------------------|
| DONALD MESSINA,                         | ) | 2:16cv578                          |
|   | ) | Electronic Filing                  |
| Plaintiff,                              | ) |                                    |
|   | ) | Judge David Stewart Cercone        |
| v.                                      | ) | Magistrate Judge Lisa Pupo Lenihan |
|   | ) |                                    |
| MARK T. AARON, <i>District Attorney</i> | ) |                                    |
| <i>of Clarion County, Pennsylvania,</i> | ) |                                    |
|   | ) |                                    |
| Defendant.                              |   |                                    |

**MEMORANDUM ORDER**

This case was commenced on May 10, 2016, with Plaintiff's filing of a Motion for Leave to Proceed *in forma pauperis* ("IFP"). (ECF No. 1.) The case was then referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges.

On May 12, 2016, Magistrate Judge Lenihan issued a Report and Recommendation wherein she recommended that Plaintiff's IFP Motion be denied in accordance with 28 U.S.C. § 1915(g), and that this action be dismissed without prejudice to Plaintiff's right to reopen it by paying the full \$400.00 filing fee. (ECF No. 2.) Plaintiff was advised that written objections to the Report and Recommendation were to be filed within 14 days of the date of service. On May 24, 2016, Plaintiff filed timely Objections to the Report and Recommendation. (ECF No. 3.)

In his Objections, Plaintiff requests that this Court reconsider his IFP Motion because he has only \$12.82 in his inmate account. Although unfortunate that he does not have the funds to proceed with this action at this time, this Court is bound by the dictates of 28 U.S.C. § 1915(g),

and must therefore deny Plaintiff's IFP Motion. Accordingly, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and Plaintiff's Objections thereto, the following order is entered:

**AND NOW**, this 27th day of May, 2016,

**IT IS HEREBY ORDERED** that the Motion for Leave to Proceed *in forma pauperis* (ECF No. 1) is **DENIED** without prejudice. Plaintiff may reopen this case by paying the full \$400.00 filing fee.

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 2) is affirmed and adopted as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Clerk of Court shall mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

s/ DAVID STEWART CERCONI  
David Stewart Cercone  
United States District Judge

cc: Donald Messina  
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(Via First Class Mail)